

DATE: April 1, 2004

In re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 02-33145

DECISION OF ADMINISTRATIVE JUDGE

JAMES A. YOUNG

APPEARANCES

FOR GOVERNMENT

Francisco J. Mendez, Esq., Department Counsel

FOR APPLICANT

Jeffrey S. Gard, Esq.

Anna Bond

SYNOPSIS

In 1991, when Applicant was 19 years old, he assaulted a driver who had cut him off at a stop light. Eleven years later, on 4 July 2002, Applicant and his girlfriend were arrested for assaulting each other during a domestic squabble. Applicant has successfully completed an anger management course under the supervision of a psychologist and appears to have learned methods for coping with anger and frustration. Clearance is granted.

STATEMENT OF THE CASE

The Defense Office of Hearings and Appeals (DOHA) declined to grant or continue a security clearance for Applicant. On 15 October 2003, DOHA issued a Statement of Reasons (SOR)⁽¹⁾ detailing the basis for its decision-security concerns raised under Guideline J (Criminal Conduct) of the Directive. Applicant answered the SOR in writing on 3 December 2003 and elected to have a hearing before an administrative judge. The case was assigned to me on 27 January 2004. On 3 March 2004, I convened a hearing to consider whether it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. DOHA received the hearing transcript (Tr.) on 17 March 2004.

FINDINGS OF FACT

Applicant is a 31-year-old principal consultant for a defense contractor. In 1991, when he was 19, Applicant was arrested for aggravated battery, a felony, for an incident of road rage. Applicant was involved in a scuffle with another motorist who had cut in front of him at a stop light. Applicant got out of his car and spat on the other driver's window. The other driver got out of his vehicle and the scuffle ensued. Applicant completed a deferred prosecution program, after which the charge was dismissed on 7 October 1992.

On 4 July 2002, Applicant and his girlfriend were both arrested for assault (third degree) and harassment, both misdemeanors. Applicant and his girlfriend became embroiled in an argument while planning a holiday trip. Applicant's girlfriend decided to move out of the house and packed some of her belongings. A scuffle ensued, the police were called, and both Applicant and his girlfriend were arrested.

Applicant's attorney sent him to a licensed psychologist for diagnosis. The psychologist met with Applicant for over six hours and had him complete certain psychological tests. The psychologist opined Applicant did not have any severe psychological problems, but did have an anger control problem. He added the following to his report:

It is worth noting, however, that [Applicant's] psychological test data suggests that he is more prone than most people to making errors in judgement, by misperceiving the meaning of events, and making mistakes in his impression of other people. These judgement problems suggest a likelihood that [Applicant] will fail to anticipate the consequences of his actions and misconstrue what constitutes appropriate behavior, particularly when he is experiencing intense emotions.

Ex. A at 7-8. Nevertheless, the psychologist found Applicant to be at "low-risk for engaging in future acts of domestic violence," and therefore, did not recommend he participate in the "standard 36 session sequence of domestic violence offender treatment." *Id.* at 9. The psychologist did think Applicant "would benefit from social skills training that includes strategies for improving anger management and improving accuracy of interpersonal perceptions." *Id.* Applicant eventually pled guilty to phone harassment and received a 12-month deferred judgment requiring that he complete 12 sessions of anger management. Applicant completed the anger management program with the diagnosing psychologist.

POLICIES

"[N]o one has a 'right' to a security clearance." *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). As Commander in Chief, the President has "the authority to . . . control access to information bearing on national security and to determine whether an individual is sufficiently trustworthy to occupy a position . . . that will give that person access to such information." *Id.* at 527. The President has restricted eligibility for access to classified information to United States citizens "whose personal and professional history affirmatively indicates loyalty to the United States, strength of character, trustworthiness, honesty, reliability, discretion, and sound judgment, as well as freedom from conflicting allegiances and potential for coercion, and willingness and ability to abide by regulations governing the use, handling, and protection of classified information." Exec. Or. 12968, *Access to Classified Information* § 3.1(b) (Aug. 4, 1995). Eligibility for a security clearance is predicated upon the applicant meeting the security guidelines contained in the Directive.

Enclosure 2 of the Directive sets forth personal security guidelines, as well as the disqualifying conditions (DC) and mitigating conditions (MC) under each guideline. In evaluating the security worthiness of an applicant, the administrative judge must also assess the adjudicative process factors listed in ¶ 6.3 of the Directive. The decision to deny an individual a security clearance is not necessarily a determination as to the loyalty of the applicant. *See* Exec. Or. 10865 § 7. It is merely an indication that the applicant has not met the strict guidelines the President and the Secretary of Defense have established for issuing a clearance.

Initially, the Government must establish, by substantial evidence, conditions in the personal or professional history of the applicant that disqualify, or may disqualify, the applicant from being eligible for access to classified information. *See Egan*, 484 U.S. at 531. The Directive presumes a nexus or rational connection between proven conduct under any of the disqualifying conditions listed in the guidelines and an applicant's security suitability. *See* ISCR Case No. 95-0611 at 2 (App. Bd. May 2, 1996).

Once the Government establishes a disqualifying condition by substantial evidence, the burden shifts to the applicant to rebut, explain, extenuate, or mitigate the facts. ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002); *see* Directive ¶ E3.1.15. An applicant "has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue his security clearance." ISCR Case No. 01-20700 at 3.

CONCLUSIONS

In the SOR, DOHA alleged Applicant was arrested for felony aggravated battery in 1991 (¶ 1.a.) and assault and harassment on 4 July 2002 (¶ 1.b.). A history or pattern of criminal activity creates doubt about an applicant's judgment, reliability, and trustworthiness. Directive ¶ E2.A10.1.1.

The Government established by substantial evidence and Applicant's admissions that Applicant has committed criminal assaults. His offenses invoke disqualifying conditions E2.A10.1.2.1. (allegations or admissions of criminal conduct) and E2.A10.1.2.2. (a single serious crime or multiple lesser offenses). There is, however, clear evidence of rehabilitation. MC E2.A10.1.3.6. Applicant completed the anger management course and appears to have adopted strategies for coping with anger and frustration in interpersonal relationships. After considering the whole person, I am convinced Applicant's past criminal conduct is not likely to recur, and he does not represent a security risk. I find for Applicant.

FORMAL FINDINGS

The following are my conclusions as to each allegation in the SOR:

Paragraph 1. Guideline J: FOR APPLICANT

Subparagraph 1.a.: For Applicant

Subparagraph 1.b.: For Applicant

DECISION

In light of all of the circumstances presented by the record in this case, it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. Clearance is granted.

James A. Young

Administrative Judge

1. Pursuant to Exec. Or. 10865, *Safeguarding Classified Information within Industry* (Feb. 20, 1960), as amended and modified, and Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Jan. 2, 1992), as amended and modified.